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# RECENT DECISIONS.

DOUGLAS M. BLACK, *Editor-in-Charge.*

BILLS AND NOTES—COLLATERAL AGREEMENTS—ACCELERATION OF MATURITY.—A mortgage executed at the same time and as security for the note in suit contained a provision accelerating the maturity of the note in the case of non-payment of the interest or taxes. There was default in the payment of interest and the holder of the note sued thereon before its face maturity. *Held*, the action was premature. *Allwood v. Harrison* (Okla. 1917) 168 Pac. 440.

It is now well settled that the validity of a negotiable instrument is not impaired by a provision that the time of maturity may be accelerated on the happening of a contingency within the control of the maker. *Wilson v. Campbell* (1896) 110 Mich. 580, 68 N. W. 278. Moreover the weight of authority upholds the doctrine that a collateral agreement in writing executed at the same time and in connection with the note for which it is security has no effect upon the negotiability of the note itself. *Barker v. Sartori* (1911) 66 Wash. 260, 119 Pac. 611; 17 Columbia Law Rev. 644. Since the making and delivery of a writing in the form of a note of itself creates an obligation by the law merchant, any other agreement executed therewith is a separate and distinct contract and at most can be treated as giving rise to a defense or counterclaim and not as modifying the content of the obligation resulting from the note. Norton, Bills & Notes (4th ed.) 109, *n.* If, however, the collateral agreement is written upon the face of the instrument it will impair negotiability if it amends the terms of the instrument, *Allison v. Hollembaek* (1908) 138 Iowa 479, 114 N. W. 1059, but not where such agreement simply provides for the preservation of the security and does not purport to vary the terms of the principal promise. *Farmer v. First Nat. Bank of Malvern* (1909) 89 Ark. 132, 115 S. W. 1141. Consequently, provisions and conditions in the collateral agreement which relate to the preservation or enforcement of the mortgage security do not affect the status of the note as a negotiable instrument. *Thorpe v. Mindeman* (1904) 123 Wis. 149, 101 N. W. 417. A stipulation in the agreement accelerating the maturity of the note on the happening of any of the defaults mentioned in the agreement is construed to relate to the maturing of the indebtedness only for the purpose of remedies provided therein. *Taylor v. American Bank* (1912) 63 Fla. 631, 57 So. 678; *McClelland v. Bishop* (1884) 42 Oh. St. 113; *White v. Miller* (1893) 52 Minn. 367, 54 N. W. 736; *contra*, *Wheeler & Wilson Mfg. Co. v. Howard* (C. C. 1886) 28 Fed. 741; *Ward v. San Antonio Life Ins. Co.* (Tex. 1914), 164 S. W. 1043. Thus, where a note secured by a mortgage contained provisions inconsistent with it the courts have held in an action on the note that the terms in the note in suit were controlling. *Kennedy v. Gibson* (1904) 68 Kan. 612, 75 Pac. 1044. Therefore, the principal case is in accord with the weight of authority in holding that an action on the note not yet matured according to its face, was premature, notwithstanding the default in the payment of interest giving rise to an action for foreclosure. Norton, *op. cit.* 111, *n.*